

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 JOSE A. MARTINEZ,

6 Petitioner,

7 v.

8 TIMOTHY WENGLER,

9 Respondent.

Case No. C08-5144FDB

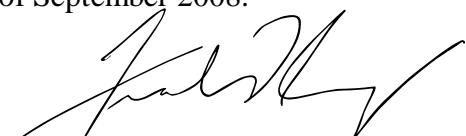
ORDER ADOPTING REPORT
AND RECOMMENDATION
AND DISMISSING
PETITIONER

10 The Magistrate Judge recommends dismissal of this habeas corpus petition because it is not timely
11 filed. Petitioner has filed objections, pointing out, among other things, the rule that the time that a matter
12 is pending for post-conviction review does not count toward the limitation period. This rule was duly
13 taken into consideration by the Magistrate Judge when he calculated elapsed time for statute of limitations
14 purposes in this case. The Petitioner's objections are without merit.

15 The Court, having reviewed the two petitions for habeas corpus, respondent's motion for summary
16 judgment, the Report and Recommendation of Judge J. Kelley Arnold, United States Magistrate Judge,
17 and the remaining record, does hereby find and ORDER.

- 18 (1) The Court adopts the Report and Recommendation.
19 (2) The Petition was not filed within the one year period of limitation, and it is therefore
20 DENIED.
21 (3) Petitioner's pending motions, if any, are DENIED, as being moot.
22 (4) The Clerk is directed to send copies of this Order to plaintiff, to counsel of record, and to
23 the Hon. J. Kelley Arnold.

24 DATED this 30th day of September 2008.

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26 

27 FRANKLIN D. BURGESS
28 UNITED STATES DISTRICT JUDGE